

Overlapping Investigative Authorities of Prosecutors and Police in the Draft Criminal Procedure Code from an Indonesian Constitutional Perspective

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Abstrak

Munculnya dualisme kewenangan penyidikan antara Kejaksaan dan Kepolisian dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Acara Pidana (RUU KUHP) menimbulkan ambiguitas hukum yang berdampak pada ketidakpastian dalam sistem ketatanegaraan Indonesia. Kewenangan penyidikan yang semula menjadi domain Kepolisian berdasarkan KUHP, diperluas melalui ketentuan Pasal 12 ayat (11) dan Pasal 111 ayat (2) RUU KUHP. Perluasan ini berpotensi memunculkan tumpang tindih yurisdiksi, mengganggu prinsip *due process of law*, serta melemahkan mekanisme *checks and balances* dalam sistem peradilan pidana. Ketidakjelasan batas kewenangan antara Kepolisian dan Kejaksaan juga dikhawatirkan menimbulkan konflik kelembagaan dan inefisiensi penegakan hukum. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual. Pendekatan perundang-undangan digunakan untuk mengkaji ketentuan hukum positif yang berlaku dan rancangan yang sedang dibahas, sedangkan pendekatan konseptual digunakan untuk menganalisis prinsip-prinsip hukum dan doktrin yang relevan, termasuk pentingnya koordinasi antar-lembaga dalam kerangka negara hukum. Oleh karena itu, restrukturisasi kewenangan penyidikan secara jelas dan proporsional sangat diperlukan agar sistem peradilan pidana di Indonesia dapat berjalan lebih adil, efektif, dan selaras dengan prinsip-prinsip negara konstitusional.

Kata Kunci: Penyidikan, Kejaksaan, Kepolisian, Rancangan KUHP

Abstract

The emergence of dualism in investigative authority between the Prosecutor's Office and the Police in the draft Criminal Procedure Code (RUU KUHP) has triggered legal ambiguity, resulting in uncertainty within Indonesia's constitutional system. Investigative authority, which is generally vested in the Police as stipulated in the current Criminal Procedure Code (KUHP), has been expanded—particularly through the provisions of Article 12 paragraph (11) and Article 111 paragraph (2) of the draft law. This situation has the potential to create overlapping jurisdictions, disrupt the principle of due process of law, and weaken the checks and balances within the criminal justice system. The lack of clarity in delineating the boundaries of authority between the Police and the Prosecutor's Office may lead to institutional conflicts and inefficiencies in law enforcement. This study employs a normative juridical method, utilizing both statutory and conceptual approaches. The statutory approach is used to systematically examine existing and proposed provisions of positive law, while the conceptual approach serves to analyze relevant legal principles and doctrines, including inter-agency coordination within the framework of the rule of law. Therefore, a clear and proportional restructuring of

investigative authority is necessary to establish a criminal justice system that is fair, effective, and aligned with the principles of a constitutional state.

Keywords: Investigation, Prosecutor's Office, National Police, Draft Criminal Procedure Code

1. Introduction

Investigative authority is an important foundation for ensuring a fair, transparent, and accountable law enforcement process. This authority has been normatively regulated through various legal instruments, especially in Law Number 8 of 1981 concerning the Criminal Procedure Law (KUHP). In general, the Criminal Procedure Code emphasizes that the investigator in general criminal cases is the National Police of the Republic of Indonesia. However, in its development, the regulation of investigative authority is increasingly complex with the presence of various sectoral laws that give investigative authority to the Prosecutor's Office, such as the Law on the Eradication of Corruption and the Law on Human Rights. This phenomenon then gives birth to the problem of dualism or even overlapping investigative authority, which causes polemics in the Indonesian legal system.

This problem is increasingly emerging along with the discussion of the Criminal Procedure Bill, which contains new provisions that have the potential to provide an expansion of investigative authority to the Prosecutor's Office. Article 12 Paragraph (11) in the Criminal Procedure Bill is one of the points that has attracted attention, because it stipulates that if within a period of 14 days the public report is not responded to by the Police, then the public is given the right to submit the report directly to the Prosecutor's Office. The existence of this article opens up space for the dualism of investigative authority between the Police and the Prosecutor's Office. From the perspective of constitutional law, authority is the power given by the State to State institutions which are part of the integrated system in the constitution. Authority in the investigation process is an essential component in the criminal justice system that demands its implementation in an organized and systematic manner. When the Prosecutor's Office is allowed to directly receive reports and conduct investigations, without procedures that prioritize a one-stop investigation mechanism, this has the potential to undermine the harmony of the criminal law process in Indonesia (Safa'at dkk., 2024).

The issue of overlapping authority is increasingly complex with the presence of other provisions in the Criminal Code Bill, especially Article 111 Paragraph (2), which gives the public prosecutor the authority to submit an application to test the validity of the arrest and detention act. This provision, according to many observers, has gone beyond the traditional function of the Prosecutor's Office as a public prosecutor and has the potential to intervene in the work domain of the Police. In a healthy criminal justice system, the duties and functions between law enforcement agencies should be regulated rigidly and clearly, in order to avoid conflicts of interest and prevent abuse of authority (Siti Zainab Yanlua dkk., t.t.).

In addition to the problem of investigative authority regulated in the Criminal Code Bill, the expansion of the authority of the Prosecutor's Office is also regulated in other regulations, such as in Law Number 16 of 2004 and Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia. One of the aspects that is often highlighted is the role of the Prosecutor's Office intelligence in multimedia

supervision and development, which is considered to have shifted from the main function of the Prosecutor's Office as a public prosecutor's institution. This resulted in a blurring of functions between the Prosecutor's Office and other institutions such as the Police, the State Intelligence Agency (BIN), and even the Indonesian National Army (TNI) (Saputra, 2025).

Based on the study of the theory of the state of law by Friedrich Julius Stahl, which states that the government must run above the law and all its authority is strictly regulated, the current condition of investigation dualism is not in harmony with this principle (Rahardjo, 2009). Montesquieu's theory of separation of powers also encourages that each state institution has tasks and functions that do not overlap (Husen, 2019). If the investigation is carried out without coordination between agencies, it will result in duplication of tasks and difficulties in accountability (Walker, 1992).

Some countries have carried out reforms in investigations by presenting integrated investigative institutions or by emphasizing the division of authority based on the type of criminal act. For example, in some countries such as Canada and the Netherlands, the police are fully responsible for the investigation of all cases, but with strict supervision from prosecutors (Dinar Kripsiaji & Nur Basuki Minarno, 2022). This condition is different from Indonesia which still adopts a dual authority pattern, which not only creates legal confusion but also has an impact on the performance of law enforcement institutions (Ali, 2007).

The overlap of investigative authority between the Police and the Prosecutor's Office is a profound problem that requires serious attention and concrete solutions. To create a more effective and efficient criminal justice system, reforms are needed that include changes in regulations, clearer division of authority, improved coordination between institutions, and strengthened human resource capacity. With these steps, it is hoped that the Indonesian legal system can run more transparently, accountably, and fairly, as well as provide a sense of security and trust to the public (Munib, 2018).

This study delves deeply into the dynamics of the intersection of investigative authority between the Prosecutor's Office and the Police, as part of an effort to understand the loopholes in the national legal system that often trigger legal uncertainty, a phenomenon that has become increasingly prominent as the Criminal Procedure Bill is discussed. Different from the previous study, which only highlighted the sectoral aspects of criminal procedural law, this study places the issue of authority within the framework of the constitution by highlighting the failure of institutional design and the incompatibility of the division of authority with the principles of the state of law and separation of powers. In the global context, Indonesia is considered to have not implemented a coherent model like in developed countries, which have established one main investigative authority. Therefore, this research enriches the academic discourse by combining the approach of criminal procedural law, constitutional law, and institutional comparative studies as a basis for a more effective and constitutional reform of the criminal justice system.

2. Method

This research was conducted with a normative juridical method, which combines an approach to laws and regulations (*statute approach*) and a conceptual approach (Rizkia & Fardiansyah, 2023). The normative method was chosen because this research is focused on the assessment of positive legal norms that apply and are in the process of being formed, especially related to the provisions of the investigative authority

between the Prosecutor's Office and the Police in the Draft Law on the Criminal Procedure Code (RUU KUHAP).

The legislative approach is carried out by systematically examining the relevant provisions of laws and regulations, starting from the Constitution of the Republic of Indonesia of 1945 as the highest basic law, Law Number 8 of 1981 concerning the Criminal Procedure Law (KUHP), Law Number 16 of 2004 and Law Number (Rizkia & Fardiansyah, 2023) 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia, Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, and the draft regulations that are being discussed, namely the Criminal Procedure Bill. In addition, the author also examines sectoral provisions such as the Corruption Law and the Law on Human Rights which give investigative authority to the Prosecutor's Office.

A conceptual approach is used to analyze the principles, principles, and legal doctrines that have developed, especially those related to the constitutional system, the division of power, the principle of due process of law, the principle of fair trial, and the principle of checks and balances. This research also analyzes the concept of investigative authority in the modern legal system and the application of the principle of coordination between law enforcement agencies within the framework of the state of law. Data collection in this study was carried out through library research with primary data sources in the form of laws and regulations, and secondary data sources in the form of academic documents, results of previous research, legal journal articles, and decisions of the Constitutional Court (Djulaeka & Devi Rahayu 2020).

3. The Dualism of Investigative Authority

The authority to conduct an investigation is an important element in the law enforcement mechanism that begins with an indication of the occurrence of a criminal act. Based on Article 1, number 2 of the Criminal Procedure Code (KUHP), an investigator is defined as an official of the National Police of the Republic of Indonesia or a certain civil servant who is specifically authorized by law to carry out investigations. Meanwhile, the investigation itself is understood as a series of legal actions carried out by investigators, in accordance with the provisions of the law, in order to collect and seek evidence that can explain a criminal act and identify the perpetrators (Desianto, 2022).

The Criminal Code from the beginning only gave investigative authority to the National Police of the Republic of Indonesia (Sundari dkk., 2025). The police, as a law enforcement institution, has the main task in the investigation process, starting from the stage of receiving reports, investigations, investigations, to submitting case files to the Prosecutor's Office as a public prosecutor's institution. This provision shows that the investigation function is the exclusive authority of the police in order to maintain the clarity of the chain of command of law enforcement.

However, in the course of time, the legislative arrangements have evolved. Several sectoral laws give investigative authority to the Prosecutor's Office, as found in Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, as well as Law Number 26 of 2000 concerning Human Rights Courts. In this context, the Prosecutor's Office is given special authority to investigate certain criminal acts that are considered to have high complexity and high risks to public justice. This marks the development of a special investigation model or *lex specialis* (Imang Job Marsudi, t.t.).

However, the arrangement actually caused a polemic related to the disharmony of investigative authority between two law enforcement institutions, namely the Police and the Prosecutor's Office. Not infrequently, overlapping investigative authorities confuse law enforcement practices, even triggering juridical conflicts in the field.

4. Comparison of Investigative Authorities in Different Countries

The Netherlands and Canada are two countries that have reformed the criminal justice system by adopting a structured and focused model of investigative authority (Halderen & Lasthuizen, 2013). In both countries, investigative authority is entirely under the responsibility of the police. However, the role of the prosecutor remains significant, not as an executor of the investigation, but as a controller of the legal process (legal supervisor) and public prosecutor (Studies, 1994). In other words, the prosecutor is in charge of ensuring that the investigation process runs in accordance with the principles of legality and human rights, without interfering with the technical implementation of the investigation by the police (Sossin, 2004).

The model provides structural clarity between the investigative and prosecution functions, which directly strengthens the accountability of law enforcement agencies. In the Netherlands, for example, the police are under the administrative control of the Ministry of Home Affairs, but in the case of criminal investigations, they work under the direction of prosecutors who are under the Ministry of Justice (*Wat doet de politie?*, 2009). This creates a balance between technical professionalism and legal supervision. Similarly, in Canada, despite the varying levels of legal jurisdiction (provincial and federal), this principle of separation of functions remains a key pillar in its judicial system.

In contrast, the legal system in Indonesia still maintains a pattern of dual authority in investigations. Both the Police and the Prosecutor's Office have the authority to conduct investigations into certain types of criminal acts. In practice, this dualism often leads to overlapping authority, disharmony between institutions, and even rivalries that are counterproductive to law enforcement goals. Unclear boundaries of authority also risk generating legal uncertainty and weakening public trust in the criminal justice system.

Unlike the Netherlands and Canada, which have emphasized investigations as the main domain of the police under the supervision of prosecutors, Indonesia does not have a firm separation between the functions of investigators and prosecutors. Such models are vulnerable to political intervention, procedural errors, and inefficiencies in handling cases. Therefore, the lessons learned from the two countries should encourage Indonesia to reform its model of investigative authority in order to create a more responsive, efficient, and accountable judicial system. Here's the comparison table :

Table 1. Comparison of investigative authorities in the Netherlands and Canada

Comparative Aspects	Netherlands	Canada	Indonesia
Principal Investigator Agencies	Polisi nasional (<i>Nationale Politie</i>)	Federal police and local police (<i>RCMP and municipal police</i>)	The Indonesian National Police (Polri) and the Indonesian Prosecutor's Office

Prosecutor's Authority in Investigation	The Prosecutor (<i>Openbaar Ministerie</i>) directs and supervises the entire investigation process	The <i>Crown Prosecutor</i> functions as a legal supervisor of the investigator's actions	The prosecutor has limited investigative authority, but it is expanded in the Criminal Procedure Bill
Coordination Model	Integrated and hierarchical; The police are under the control of the prosecutor in terms of investigations	The prosecutor does not have command authority, but provides legal guidance and can stop the investigation	Coordination dualism: the police as the main investigator, but the prosecutor can also investigate
Clarity of Separation of Authority	Firm: the police investigate, the prosecutor directs and prosecutes	Firm: police investigate, prosecutor assesses legality and feasibility of prosecution	Not firm: overlap in investigations, especially after the Criminal Procedure Code Bill
Principles That Matter	Efficiency, legality, and hierarchical control	Accountability and due process with independent agency oversight	Sectoral autonomy and fragmentative approach
Main Problems	Challenges in maintaining the independence of investigators to the prosecutor's direction	Differences in jurisdiction and coordination between federal and local police	Overlapping authority, legal uncertainty, and institutional conflicts

5. Normative Inconsistencies in the Division of Authority

The Criminal Procedure Code Bill (RUU KUHAP) emerged as a legislative initiative to reform Indonesia's criminal procedure law. One of the provisions in the Criminal Procedure Bill that has received attention is Article 12, Paragraph 11, which stipulates that if public reports are not followed up by the police within a period of 14 days, then the public can directly report the case to the Prosecutor's Office (Haqqullah et al., 2025).

The provision is normatively intended to strengthen the community's access to justice so that it is not hampered by the negligence or lack of seriousness of the police in handling reports. However, juridically, this provision raises serious problems because it expands the authority of the Prosecutor's Office to the initial investigation stage. In fact, in the structure of the criminal justice system adopted by Indonesia, the chain of legal processes has been expressly divided into investigation by the police and prosecution by the prosecutor's office (Pradana et al., 2023).

Giving authority to the Prosecutor's Office to receive reports directly from the public, without going through a police investigation first, is feared to create a dualism of authority. In practice, this has the potential to create two lines of investigation that run parallel or even overlap, thus causing legal uncertainty

in the settlement of cases. In addition, Article 111, Paragraph 2 of the Criminal Procedure Bill also regulates the authority of the public prosecutor to apply a test of the validity of arrest and detention. This provision raises a new polemic, because the public prosecutor, in principle, acts after the investigation process is completed, not as a supervisor of the legal enforcement actions carried out by investigators.

The new provisions in the Criminal Procedure Bill, even though motivated by the spirit of improving the legal system, actually threaten the firmness of the functioning of law enforcement institutions. Systematically, this has the potential to blur the functional boundaries between investigators and public prosecutors. From the point of view of the constitutional system, the overlap of authority between the Police and the Prosecutor's Office not only has an impact on the technical aspects of law enforcement, but also concerns the fundamental principle of the rule of law (*rechtstaat*). The 1945 Constitution of the Republic of Indonesia expressly mandates that Indonesia is a state of law that upholds the principles of due process of law and fair trial. One of the main elements of due process is the existence of legal certainty in the law enforcement process.

When there is dualism or even a slice of investigative authority, the criminal justice process risks losing the guarantee of legal certainty. The public can experience confusion about who they report to, how the investigation procedure works, and which institution has the authority to handle their cases. This uncertainty can also pose a risk of abuse of authority by law enforcement officials who can manipulate procedural mechanisms for certain interests.

Furthermore, provisions that allow the prosecutor's office to receive direct reports and carry out a supervisory function on detention also have the potential to violate the principle of checks and balances in the constitutional system. Law enforcement functions that were initially proportionally distributed among the police, prosecutor's office, courts, and correctional institutions are now blurred. Ideally, oversight of investigators' actions, such as arrests and detentions, should be carried out by the judiciary as a neutral party that guarantees the protection of human rights.

6. Implications for Legal Certainty and the Principle of the Rule of Law

The expansion of the authority of the Prosecutor's Office in various laws also exacerbates the problem of institutional disharmony. For example, in Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia, the Prosecutor's Office not only carries out the function of prosecution, but also the function of law enforcement intelligence, multimedia supervision, and an active role in supporting national development. In fact, the functions of supervision and intelligence outside the aspect of prosecution are not part of the structure of the prosecutor's authority in the civil law system, such as in Indonesia.

The implications of this overlap of authority cannot be taken lightly, because it has the potential to weaken the integration of the criminal justice system, which should run in coordination and synchronization between law enforcement agencies. Without firm regulation and clear division of roles, the law enforcement process is prone to stagnation, unfair competition between institutions, and even failure to enforce justice for the community.

Thus, the reform of the Criminal Procedure Code through the Criminal Procedure Bill should be carried out by paying attention to the principle of unity of the criminal justice system, clarifying the limits of authority between law enforcement agencies, and ensuring that the main goal of criminal procedure law reform is to realize justice that is effective, efficient, and in accordance with the principles of the rule of law.

In the Indonesian constitutional law system, the position of law enforcement agencies, including the Police and the Prosecutor's Office, is strictly regulated within the framework of the principle of separation of powers and the principle of distribution of powers. Indonesia's constitutional system does not adhere to a rigid separation of powers as in the trias politica theory, but rather a synergistic division of power under the principle of checks and balances (Hunowu dkk., 2023). In this case, law enforcement authority is distributed to several institutions that have their own functions independently but remain coordinated within the framework of the state of law.

Based on Article 24 of the 1945 Constitution of the Republic of Indonesia, judicial power is exercised by the Supreme Court and the judiciary under it, as well as by the Constitutional Court. Meanwhile, the executive function is held by the President and assisted by other relevant state ministries and institutions, such as the National Police of the Republic of Indonesia, which is regulated in Law Number 2 of 2002. On the other hand, the Prosecutor's Office of the Republic of Indonesia is an institution that carries out the prosecution function, and its position is affirmed in Law Number 16 of 2004 jo. Law Number 11 of 2021.

Normatively, the authority of investigation is basically inherent in the executive functions carried out by the Police. This is in line with the law enforcement structure that prioritizes a clear division of roles between investigators, prosecutors, and judges. Investigators (police) are in charge of conducting investigative actions, prosecutors (prosecutors) are authorized to prosecute in court, and judges are authorized to adjudicate cases. The Indonesian constitutional law system designed the mechanism so that there is no accumulation of power in one institution, so that law enforcement runs with the principle of fairness (Tamrin, 2023).

When the Prosecutor's Office is given broader investigative powers, as stipulated in several special laws and expanded further in the Criminal Procedure Code Bill, then constitutionally, there is a shift in function that has the potential to damage the balance of power of state institutions. The prosecutor's office, which is supposed to be part of the prosecution process, gets the authority to take initial actions in the investigation process, which should be the domain of the Police. This raises serious problems in the governance of law enforcement powers.

7. Authority Structuring Solutions

The Indonesian constitutional law system recognizes the principle of limitation of power, where every state institution is not allowed to exceed the limits of authority that have been regulated by the constitution or laws. Clarity and legal certainty related to the distribution of authority are an absolute must in a state of law. When the Prosecutor's Office and the Police both have investigative authority without strict limits, problems of legal uncertainty, overlapping in the implementation of duties, and potential conflicts of authority between institutions will arise (Erham dkk., 2024).

In addition, within the framework of the constitutional system, the principle of due process of law guaranteed in the constitution requires a fair, transparent, and doubtless law enforcement mechanism. Criminal justice procedures must meet the principles of fast, simple, and low-cost justice, as stipulated in Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power. Overlapping investigative authority, if left unchecked, has the potential to prolong the legal process, create uncertainty in the investigation stage, and weaken public trust in law enforcement institutions (Latipulhayat, 2017).

The principle of checks and balances, which is a hallmark of Indonesia's constitutional law system, is also at risk of being injured when there are no clear limits of authority. A prosecutor's office that is given the space to oversee investigations and, at the same time, does so can create conditions where internal oversight becomes ineffective. This will weaken the principle of interinstitutional checks and balances, which should be an important pillar in a democracy based on the law (Ahirullah & Said, 2023).

In the conception of Indonesian constitutional law, coordination between institutions is part of the working principle that must be put forward. Coordination between investigators (police) and public prosecutors (prosecutors) must be placed within the framework of cooperation (cooperative relationship), not overlap or rivalry of authority. Ideally, in the reform of the Criminal Code Bill, the arrangement for the division of investigative authority must accommodate a strong principle of coordination, while avoiding the existence of dual authority that actually clouds the governance of criminal justice.

Thus, conceptually according to the Indonesian constitutional law system, the overlap of investigative authority between the Prosecutor's Office and the Police has the potential to conflict with the principles of the rule of law, the principles of due process of law, checks and balances, and the principle of limitation of power. The reform of the Criminal Procedure Code that is currently underway needs to ensure that the criminal justice system runs harmoniously and does not create distortions of institutional functions that threaten the accountability and effectiveness of law enforcement (Adriana et al., 2025).

8. Conclusion

The overlap of investigative authority between the Prosecutor's Office and the Police in the Indonesian criminal justice system is a fundamental problem that threatens the effectiveness and certainty of the law. The Criminal Procedure Bill actually expands the prosecutor's investigative authority, exacerbating the potential for conflicts between law enforcement agencies. Normatively, investigations are the domain of the Police, while the Prosecutor's Office plays the role of the prosecutor. However, sectoral regulations and the Criminal Procedure Code Bill create a wedge of authority that risks causing dualism and institutional disharmony.

Criminal procedure law reform needs to reaffirm the limits of the authority of each institution in a firm and accountable manner. Investigations must remain the main authority of the Police, and the Prosecutor's Office is only given limited authority according to the provisions of the law. Supervision should remain in a neutral judiciary, and public reporting channels need to be simplified so as not to cause overlapping mechanisms. The restructuring of the investigative authority system must be directed at the creation of a harmonious, transparent, and fair criminal justice system in accordance with the principles of the rule of law.

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